

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

**NORFOLK SOUTHERN RAILWAY COMPANY,**

**Plaintiff,**

**v.**

**Civil Action No.: 7:08-cv-00340**

**DRUMMOND COAL SALES, INC.,**

**Defendant.**

**NORFOLK SOUTHERN’S MOTION TO REOPEN CASE,  
ASSIGN TO JUDGE URBANSKI, AND  
ENFORCE SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

On January 19, 2010, this Court entered an Order of Dismissal retaining jurisdiction to enforce the Settlement Agreement between plaintiff and counterclaim-defendant, Norfolk Southern Railway Company (“Norfolk Southern”) and defendant and counterclaim-plaintiff Drummond Coal Sales, Inc. (“Drummond”), which Settlement Agreement arose out a mediation facilitated by then-Magistrate Judge Michael F. Urbanski. (*See* Order of Dismissal, ECF No. [84](#)).

As part of the Settlement Agreement, Norfolk Southern and Drummond executed a Mutual Release, which provides *inter alia* that Norfolk Southern and Drummond released each other from all claims – from “the beginning of time” to the date of the release – arising out of the formation or performance of their Transportation Contract C-9337, including all claims that *were* made or asserted in the captioned civil action, as well as all claims that *could have been* made or asserted in the captioned civil action. The Mutual Release further provides that “[i]n the event any future dispute arises concerning the scope or construction of this mutual release, the undersigned parties [*i.e.* Norfolk Southern and Drummond] agree that, as a material element of

the Settlement Agreement, such dispute *shall* be submitted to Judge Michael F. Urbanski...” (Memo. Supp. Ex. 2, Mutual Release ¶ 7) (emphasis added).

On January 29, 2016, in contravention of the plain language of the Mutual Release and in breach of the Settlement Agreement, Drummond filed a Complaint against Norfolk Southern in the Northern District of Alabama, seeking rescission or reformation of the Transportation Contract that was the subject of this action, mounting a collateral attack on the Settlement Agreement, and asserting claims against Norfolk Southern that had been extinguished by the Mutual Release.

For the reasons set forth in the accompanying memorandum, Norfolk Southern respectfully requests that the Court:

1. Reopen the case;
2. Assign Judge Urbanski to such further proceedings in this case as may be required;
3. Enter an order enforcing the Mutual Release, Settlement Agreement and Transportation Contract, as amended pursuant to the Settlement Agreement, and declaring the parties’ rights and obligations with respect thereto so that they may govern their future affairs accordingly;
4. Award Norfolk Southern its reasonable attorneys’ fees, expenses and costs incurred in responding to the released claims as damages for Drummond’s breach of the Settlement Agreement and Mutual Release or, alternatively, under the Court’s inherent power to sanction vexatious litigation; and
5. Order such other further and general relief as may be appropriate.

Date: February 25, 2016.

Respectfully submitted,

NORFOLK SOUTHERN  
RAILWAY COMPANY

By Counsel

s/ Michael W. Smith

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, and I also caused a copy of the foregoing to be served by first-class mail and electronic mail on:

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